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THE CIVIL RIGHTS ACT OF 1964 AND COALITION POLITICS

SHERYLL D. CASHIN*

Professor Days began his Childress Lecture by recounting his personal experience with Jim Crow segregation. I too have such a story. I was born and raised in Hunstville, Alabama, a city that is notable, among other things, for having desegregated its public accommodations in 1962, two full years before the passage of the Civil Rights Act of 1964. The turning point in the non-violent sit-in movement in Hunstville was when a young, African-American woman was arrested with a four-month-old baby in her arms, along with a friend who was eight months pregnant. This caused some outrage and widespread press coverage. The mother was Joan Carpenter Cashin and the baby was me. I am proud to have played a role, however small, in the most important social movement of the twentieth century in the United States.

In the past year we have celebrated a number of civil rights milestones. The fiftieth anniversary of *Brown v. Board of Education*.¹ The fortieth anniversaries of the March on Washington and of the Civil Rights Act of 1964.² Collectively our nation now venerates our most progressive, socially transforming legal edicts, even as we accept, or ignore, persistent racial inequality. Much has been written about the limits and modern meaning of *Brown*.³ Elsewhere I have argued that we have failed to live up to the

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1. 347 U.S. 483 (1954).

2. Pub. L. No. 88-352, 78 Stat. 241 (1964).

3. See, e.g., DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 6-7 (2004) (discussing Professor Seidman's claim that the Supreme Court's declaration that separate facilities were inherently unequal legitimated current unequal arrangements by suggesting that those who remain poor and disempowered had simply failed to take advantage of their definitinally equal status); MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 344-442 (2004); CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION* xv (2004) (arguing that the unfulfilled legacy of *Brown* reflects our nation's limited commitment to racial justice); Gary Orfield & Chungmei Lee, *Brown at 50: King's Dream or Plessy's Nightmare?* THE CIVIL RIGHTS PROJECT, HARV. U. 2, 40 (2004) (arguing, *inter alia*, that school segregation has been increasing since the 1990s and that a renewed commitment to integration is needed, which would involve appointing *Brown*-friendly judges and civil rights enforcement officials, reviving federal aid programs that confront race relations issues, and providing financial incentives to

integrationist vision animating *Brown* and the civil rights movement primarily because our neighborhoods remain largely segregated by race and class.⁴ In this commentary, I celebrate the coalition politics that made the civil rights revolution possible with a view toward understanding how coalition strategies might reenergize progressive politics today. The civil rights movement ultimately succeeded because it had moral force, but also because a powerful, well-organized grassroots effort altered the previous understanding of a voting majority in Congress as to what was in their enlightened self-interest and that of the nation. This is a critical object lesson for progressives of today. Broad coalitions for progressive change are theoretically possible when common interests—or a convergence of perceived self-interest—can be established. With rising diversity it is increasingly unlikely that a single racial group can succeed independently in pursuing a progressive policy agenda. In racially diverse contexts, coalition building is the only route to meaningful political power. Diversity, then, can be a source of power if properly harnessed. There are hopeful current examples of multiracial coalitions that have succeeded in transcending potential race and class conflicts and have therefore altered the status quo in a policymaking context. While the path of least resistance is to work solely within single issue or single identity constituencies, progressives will be increasingly disempowered when they fail to build alliances and relationships across boundaries of race and class.

I. CELEBRATING THE CIVIL RIGHTS ACT OF 1964

The Civil Rights Act of 1964 became law on July 2 of that year, after 57 days of debate.⁵ Among the other iconic events of that hot summer were the murders of civil rights workers Schwerner, Goodman, and Chaney in Mississippi and the Birmingham church bombing that killed four little girls.⁶

white suburban schools that accept segregated minority students); Lani Guinier, *From Racial Liberalism to Racial Literacy: Brown v. Board of Education and the Interest-Divergence Dilemma*, 91 J. OF AM. HISTORY 92, 95–96 (2004) (arguing that *Brown* “redefine[d] equality, not as a fair and just distribution of resources, but as the absence of formal, legal barriers that separated the races” and “convinced working-class whites that their interests lay in white solidarity rather than collective cross-racial mobilization”); Mark Tushnet, *Public Law Litigation and the Ambiguities of Brown*, 61 FORDHAM L. REV. 23, 27–28 (1992) (arguing that *Brown*’s “all deliberate speed” standard, authored by Justice Frankfurter in an attempt to limit the expansive reach of *Brown*, ironically greatly expanded the Court’s ability to impact social policy).

4. See generally SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* (2004).

5. U.S. Census Bureau, *Special Edition, Civil Rights Act of 1964: 40th Anniversary*, available at http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/001800.html (last updated June 30, 2004) [hereinafter Census Bureau, *Special Edition*].

6. Clarence Page, *40 Years of Opportunities*, CHI. TRIB., July 4, 2004, at C9 (citing COLIN POWELL, *MY AMERICAN JOURNEY* (1995)).

A young Colin Powell, then an infantry captain undergoing leadership training at Fort Benning, Georgia, made it plain to his white colleagues why he was so disappointed with Senator Barry Goldwater's stand against the Act and what the new law would mean in Powell's own life.⁷ Goldwater was one of only a few Republican Senators to vote against the Act, and he made his opposition to civil rights the centerpiece of his failed presidential bid against Lyndon Johnson in the same year.⁸ Powell noted that being black meant "you'd better have a strong bladder" because in a drive between Washington, D.C. and Fort Benning, he and his family were hard pressed to find a decent place to use a restroom, to dine, or to spend the night.⁹ The mantra of property rights asserted by his fellow white officers in defense of Goldwater's position paled, he argued, to the indignities being suffered by black folks.¹⁰ Powell's story of frustration with interstate travel is a testament to the very different America that prevailed under the era of Jim Crow segregation.¹¹

A. *The Act's Legacy*

In his Childress Lecture, Professor Days provides a comprehensive overview of the Act and its civil rights progeny. I will not attempt to rehearse those details here. Suffice it to say, among its many provisions, the Civil Rights Act of 1964 barred racial discrimination in public accommodations, employment, and virtually all federally funded activities, including education, and also prohibited discriminatory activities based on other characteristics such as gender, religion, and national origin.¹² Women's equality was introduced by fiat. The Act's ban on "sex" discrimination in employment was actually

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. According to Kenneth Teasdale, Counsel to Majority Leader Mansfield at the time of passage of the Act, one of the reasons President Lyndon B. Johnson was sympathetic to the civil rights cause was that on his trips from Washington, D.C. and his home in Texas, there was only one hotel, located in Atlanta, Georgia, where Johnson and his black driver could both get a room. This story was related by Mr. Teasdale as part of a panel discussion in which we both participated following the Childress Memorial Lecture, on October 1, 2004.

12. Title II of the Act bars discrimination in public accommodations, including hotels and restaurants. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 243 (1964) (codified as amended at 42 U.S.C. § 2000a (2000)). Title VI prohibited recipients of federal funds from engaging in discrimination and authorized the federal government to withhold federal funds from any program that practiced discrimination. Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241, 252 (1964) (codified as amended at 42 U.S.C. § 2000d (2000)). Title VII prohibited discrimination in employment by any business employing more than 25 people and established the Equal Employment Opportunity Commission (EEOC) to review complaints. Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241, 253 (1964) (codified as amended at 42 U.S.C. §§ 2000e–2000e-5 (2000)).

added by a Southern Democrat in the House in an attempt to derail the bill.¹³ As Professor Days articulates so well, since its initial passage, the Act has been amended periodically in ways that strengthen its reach and enforcement mechanisms, rendering it our Nation's most comprehensive civil rights legislation. The Act also became the model for other comprehensive anti-discrimination legislation such as the Age Discrimination in Employment Act and the Americans with Disabilities Act.

The Act, and its progeny, have had an impact in improving the lives and opportunities of many, most notably, African-Americans. Today, incidents of denial of access to public accommodations based upon race or other immutable characteristic are rare and typically met with widespread social disapprobation.¹⁴ According to the Census Bureau, since 1964 the percentage of blacks age 25 and older who obtain at least a high school diploma has risen from 26 percent to 80 percent.¹⁵ The black poverty rate has declined from about 42 percent to 24 percent.¹⁶ And yet serious gaps of racial inequality persist. For example, in 2002, the black poverty rate was three times higher than that of non-Hispanic whites, only 8 percent of whom were poor.¹⁷ Black median wealth is about 16 percent that of whites, and black median household income is about 64 percent that of whites—\$29,500 compared to \$46,300 for whites.¹⁸ There are also pronounced differences between blacks and non-Hispanic whites, *inter alia*, in employment, educational attainment, and rates of imprisonment¹⁹—differences that may be tied to stark wealth and class

13. David B. Filvaroff & Raymond E. Wolfinger, *The Origin and Enactment of the Civil Rights Act of 1964*, in LEGACIES OF THE 1964 CIVIL RIGHTS ACT 9, 22 (Bernard Grofman ed., 2000).

14. For example, when restaurant chain Denny's was accused of racial discrimination against black customers in many of its restaurants, condemnation was so widespread the chain was forced to allow its franchisees to retol menus appealing to minorities, launch an ad campaign to repair its public image, and reach an agreement with the NAACP to increase the number of blacks in management positions and the number of minority-owned franchises. Calvin Sims, *Giving Denny's a Menu for Change*, N.Y. TIMES, Jan. 1, 1994, at 43, 45.

15. Census Bureau, *Special Edition*, *supra* note 5.

16. *Id.*

17. BERNADETTE D. PROCTOR & JOSEPH DALAKER, POVERTY IN THE UNITED STATES: 2002, at 2 (2003), available at <http://www.census.gov/prod/2003pubs/p60-222/.pdf>.

18. CASHIN, *supra* note 4, at XII (citing Ana M. Aizcorbe et al., *Recent Changes in U.S. Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances*, FEDERAL RESERVE BULLETIN 89 (January 2003): I, 7–8, and Table 3 (showing black median net worth at \$19,000 in 2001 compared to \$120,990 for whites)).

19. Since the 1970s, the black unemployment rate has generally been double that of whites, and during economic downturns the unemployment gap increases—that is to say, blacks feel the effects of recessions more acutely than whites. See BUREAU OF LABOR STATISTICS, 2001 REPORT ON THE AMERICAN WORKFORCE 191 (2001). Although blacks and whites aged 25–29 are close to parity in completion of a high school education (in 2000, 87 percent of black men and 85 percent of black women aged 25–29 completed high school compared with 87 percent of white

differences between blacks and whites.²⁰ The persistence of racial inequality underscores, in my view, the need to rethink how progressivism can return to the center of American politics. To that end, I turn now to explore how coalition politics made enactment of the Civil Rights Act of 1964 possible.

B. *The Act and Coalition Politics*

Passage of the Act was by no means inevitable. In the near century between Reconstruction and the civil rights movement, there were some attempts to confer equal rights on black Americans through legislation but, as of 1964, none had succeeded in any meaningful way.²¹ In the ten years

men and 90 percent of white women), blacks aged 25–29 complete college educations at a rate much lower than whites (in 2000, 18 percent of black men and 17 percent of black women aged 25–29 completed a college education, compared with 28 percent of white men and 31 percent of white women). U.S. Census Bureau, *Percent of People 25 Years and Over Who Have Completed High School or College, by Race, Hispanic Origin and Sex: Selected Years 1940 to 2003*, available at <http://www.census.gov/population/socdemo/education/tabA-2.pdf>. In fact, young black males are more likely to end up in the criminal justice system than in institutions of higher learning. CASHIN, *supra* note 4, at 229. There are more black men in prison and jails than enrolled in colleges and universities, a dramatic and sharp reversal since 1980, when black men enrolled in higher education institutions outnumbered black men behind bars by three to one. *Id.* at 229–30. The effects of the penal system are harshest in the ghetto, where a majority of black men can be under criminal supervision. *Id.* at 247.

20. Among whites, the raw number of people that populate the lowest economic strata are smallest and these numbers grow larger with each rise up the income scale. With blacks, the opposite is true, with more black people populating the lowest economic strata and the raw numbers of blacks declining with each rise up the income scale. In other words, whites as a group are more likely to be middle, and upper-class and blacks as a group are more likely to be among the lower economic classes. Harry T. Edwards, *The Journey from Brown v. Board of Education to Grutter v. Bollinger: From Racial Assimilation to Diversity*, 102 MICH. L. REV. 944, 969 n.105 (2004). Poor blacks, in turn, are much more likely than poor whites to live in hyper-segregated, high poverty neighborhoods, with their attendant weak schools, violence, and limited economic opportunity, while poor whites are more likely to live in middle-class settings that afford more opportunity for upward mobility. CASHIN, *supra* note 4, at 163–65. One researcher has found that high school graduation and college attendance rates are equal for blacks and whites when you control for wealth rather than income. See DALTON CONLEY, *BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA* 68–79 (1999).

21. The Civil Rights Act of 1866, the work of radical Republicans of the Reconstruction era, passed by one vote over President Andrew Johnson's veto—the first veto override in American history. *U.S. Constitution: Civil Rights Act of 1866*, at <http://www.usconstitution.com/CivilRightsActof1866.pict.htm>. It granted full citizenship to all persons born on American soil, except Native Americans who were exempt from taxation, and provided that all such citizens were guaranteed the rights to make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real and personal property. The Civil Rights Act of 1866, 14 Stat. 27 (1866). However, most of these provisions were rendered ineffective either by the Ku Klux Klan's reign of terror or the Supreme Court's limiting Congress's Thirteenth Amendment enforcement power only to eliminating slavery. See *Civil Rights Cases*, 109 U.S. 3, 21–23 (1883). It was not until 1968, after the civil rights revolution, that the Court finally

between the Supreme Court's announcement of the *Brown* decision—declaring “separate but equal” racial segregation to be inconsistent with constitutional principle²²—and the passage of the Act, virtually no progress was made in school desegregation.²³ It was only when democratic processes demanded social change, resulting in new enforcement provisions in Title VI of the Act for school desegregation, that some change was forthcoming. The Supreme Court's decision in 1968 in *Green v. County School Board*, which finally announced that *immediate* school desegregation was the imperative consequence of the Court's decision in *Brown*,²⁴ likely reflected this new democratic consensus.

This transformation in majoritarian democratic opinion would not have happened through mere reliance on the leadership of political elites. Prior to the civil rights movement, most American presidents had been reluctant to advocate civil rights legislation because doing so required them to oppose well-organized Southern Democrats whom they needed to advance other agenda items.²⁵ Before the 1964 Act, the most notable civil rights advances—

deemed it appropriate for Congress to confer these citizenship rights on freed slaves under its Thirteenth Amendment enforcement powers, as a means of removing the “badges and incidents of slavery.” See, e.g., *Jones v. Mayer*, 392 U.S. 409, 440 (1968); *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971); *Runyon v. McCrary*, 427 U.S. 160, 170 (1976); *Patterson v. McLean Credit Union*, 491 U.S. 164, 192 (1989). The Civil Rights Act of 1875, a final effort by the radial Republicans on behalf of emancipated blacks, prohibited discrimination in hotels and other lodgings, public transportation, and places of public accommodation. *Civil Rights Cases*, 109 U.S. at 4–10. The Supreme Court, in the infamous *Civil Right Cases*, struck down the Act as unconstitutional, stating that Congress had no authority under the Fourteenth Amendment to regulate discrimination by private individuals. *Id.* at 24–26. These cases essentially put to rest for three quarters of a century any effort by Congress to address civil rights. JAMES M. MCPHERSON, *THE ABOLITIONIST LEGACY: FROM RECONSTRUCTION TO THE NAACP* 22–23 (1975). In 1957 and in 1960, Congress again attempted civil rights legislation, both times resulting in Southern Democrats weakening the bills beyond any effectiveness. See *infra* note 25.

22. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

23. Cass R. Sunstein, *Did Brown Matter?*, *THE NEW YORKER*, May 3, 2004, at 103 (noting that 98 percent of black students in the South still attended racially segregated schools as of 1964). The *Brown II* decision of 1955, in which the Supreme Court announced that desegregation should occur “with all deliberate speed,” is credited with contributing to this considerable lag in progress in school desegregation. See, e.g., OGLETREE, *supra* note 3, at 10–11.

24. 391 U.S. 430, 439 (1968).

25. See, e.g., Robert D. Loevy, *The Background and Setting of the Civil Rights Act of 1964*, in *THE CIVIL RIGHTS ACT OF 1964: THE PASSAGE OF THE LAW THAT ENDED RACIAL SEGREGATION I* (Robert D. Loevy ed., 1997). President Roosevelt acted on civil rights only through executive actions that did not require congressional approval, establishing a Civil Rights Section in the Justice Department and, under threat of a massive black march on Washington, creating a Fair Employment Practices Committee to eliminate discrimination in defense plants. *Id.* at 13–14. Although the Committee was abolished by Congress five years later, Roosevelt's capitulation taught black leaders that social movement pressure could yield policy gains. *Id.*

President Roosevelt's order of fair employment practices in the defense industry and President Truman's order to desegregate the armed services—had resulted from executive orders that were issued only after the venerable A.

Truman continued the precedent of using executive powers rather than legislation to advance civil rights when he ordered the integration of the United States Armed Forces. *Id.* at 15. Before he issued his executive order to integrate the Armed Forces, Truman had tried integration through legislation. *Id.* The attempt failed, and Truman's relationship with the Southern Democrats in Congress was ruined forever afterwards. *Id.* at 25. He also appointed a Committee of Civil Rights, which published a controversial report detailing the civil rights violations blacks faced in the South. *Id.* at 15.

Eisenhower's administration was initially more reluctant than either Roosevelt or Truman to address civil rights issues through legislation, relying on executive action in his first three years in office. *Id.* at 25. He ended segregationist practices in the District of Columbia and in the U.S. Government bureaucracy, and gave his attorney general broad leeway in pursuing civil rights issues, including allowing him to argue for the abolition of school segregation in *Brown v. Board of Education*. *Id.* at 16, 25. Eisenhower's contributions to civil rights were motivated partly by the emerging civil rights movement. With the national press coverage of the Montgomery bus boycott and the rise of Martin Luther King, Jr., the American public was becoming more conscious of the condition of blacks in the South. Northern politicians who had been hoping that civil rights could be dealt with quietly and slowly saw their hopes disappear with every news broadcast of white Southerners beating peaceful demonstrators. Andrew Young, *Roundtable of Participants in the Passage of the Civil Rights Act of 1964*, in *THIS CONSTITUTION: THE BICENTENNIAL OF THE BILL OF RIGHTS* 29, 31–32 (Raymond E. Wolfinger ed., 1991).

The decision in *Brown* forced Eisenhower to directly confront Southern antipathy toward integration. When states refused to integrate their schools, he reluctantly sent in U.S. Marshals to enforce the Supreme Court's orders. Filvaroff & Wolfinger, *supra* note 13, at 10. This action cost Eisenhower a tremendous amount of support in both the South and in Congress. By the beginning of Eisenhower's second term, civil rights issues could no longer be confined to executive action. Black leaders' demands that the government take a more active role in ending discrimination were beginning to resonate with more and more Americans, especially as the national news covered the violent assaults suffered by activists in the South. JAMES L. SUNDQUIST, *POLITICS AND POLICY: THE EISENHOWER, KENNEDY, AND JOHNSON YEARS* 222 (1968). In 1956, Eisenhower reluctantly allowed Attorney General Brownell to present a civil rights bill to Congress. *Id.* at 226. Eventually called the Civil Rights Act of 1957, it provided for the creation of a Commission on Civil Rights that would study racial discrimination and recommend remedies; the expansion of the Civil Rights Section of the Justice Department; the ability of the attorney general to secure court injunctions in civil rights cases and remove them from state courts to federal courts; and an increase in the Justice Department's power to prosecute interferences with the right to vote. *Id.* at 223–38.

The Civil Rights Act of 1957 was doomed from the start. Eisenhower did not even endorse the entire bill until late in 1956, when his reelection was assured. Loevy, *supra*, note 25, at 27. More importantly, the Southern Democrats in Congress immediately organized to kill the bill's most meaningful enforcement mechanisms. *Id.* at 29. Framing the issue as one of states' rights, the Southern Democrats raised enough furor to scare Eisenhower into revoking his support for parts of the bill. *Id.* at 29–30. Satisfied that the bill was thus effectively toothless, the Southern Democrats allowed the bill to pass without filibuster. *Id.* at 30. A similarly weak Civil Rights Act of 1960 became law only after a filibuster by Southern Democrats in the Senate that rendered this bill equally toothless. *Id.* at 36–37.

Philip Randolph, the founder of the Brotherhood of Pullman Porters, threatened to lead mass protests in Washington.²⁶ In early 1963, neither John F. Kennedy nor Lyndon B. Johnson were ardent advocates for civil rights legislation. President Kennedy was extremely reluctant to press for such legislation, fearing that his party would split over the issue and destroy his agenda.²⁷

The Act came about as a result of a grass roots mobilization that *demand*ed momentous social change from political elites. In particular, the extensive organization and training of citizens and students in nonviolent mass protest was critical in creating what ultimately seemed like spontaneous eruptions of civil disobedience across the South.²⁸ The turning point in the movement came in the spring of 1963, with the Birmingham demonstrations led by Dr. Martin Luther King.²⁹ King was aware that the police commissioner, Eugene "Bull" Connor, was a notorious racist who was prone to violence, and there is evidence that King intended to provoke him.³⁰ King had always believed that the civil rights movement would be at its most influential when the American people saw his peaceful demonstrators contrasted against violent white attackers. To that end, his organization held conferences with the press to discuss the march and to ensure that the cameras would be rolling, and King brought schoolchildren to march in the demonstration with the adults.³¹ Connor, as expected, responded violently, turning fire hoses and attack dogs on the demonstrators.³² The images of schoolchildren blasted with water and chased by dogs caused a tremendous uproar throughout the country and sent Birmingham into chaos.³³ Numerous organizations, including labor unions, churches, and civic groups, joined hands with the civil rights movement in

26. See BAYARD RUSTIN, *TIME ON TWO CROSSES: THE COLLECTED WRITINGS OF BAYARD RUSTIN*, at XV (Devon W. Carbado & Donald Weise eds., 2004) (citing such advances as occurring only after Randolph's threat of mass protest).

27. Kennedy became president in an atmosphere highly charged with racial politics; the 1960 campaign had seen both parties insert civil rights planks into their platforms. Filvaroff & Wolfinger, *supra* note 13, at 10. Kennedy himself had promised extensive legislative civil rights reforms and personally called Martin Luther King, Jr. while the civil rights leader was in jail. *Id.* at 10–11. Once he took office, however, he quickly backpedaled from his promises and reverted to the precedent of action only through executive orders. *Id.* at 11. Federal agencies were ordered to eliminate racial discrimination in their departments, the Justice Department increased its civil rights litigation, and federal aid for construction of segregated housing was eliminated. *Id.* In 1962 he offered weak support for a bill that would eliminate literacy tests, but the bill quickly failed. *Id.*

28. See *infra* note 36.

29. Filvaroff & Wolfinger, *supra* note 13, at 11.

30. *Id.*

31. *Id.* at 11–12.

32. *Id.*

33. *Id.*

demanding government action against discrimination.³⁴ White racists began bombing King's motel room, prompting angry black youths to counter with street violence against whites.³⁵ Most importantly, the Birmingham demonstrations inspired almost a thousand similar nonviolent protests in over one hundred southern cities, which resulted in over twenty thousand arrests.³⁶

The Kennedy administration became terrified at the prospect of racial violence exploding across the country.³⁷ For the first time, the policy makers in the White House came to believe that ignoring civil rights issues would be more politically disastrous than alienating the Southern Democrats in Congress.³⁸ Inaction on the issue would not only lead to more demonstrations and violence, it would allow the Republicans to take the lead on civil rights and carry it straight through the presidential election next year.³⁹ Kennedy thus appeared on national television in June, 1963, and told the public that he would send strong proposals to Congress to eliminate segregation in public accommodations.⁴⁰ The Justice Department began drafting a bill, trying to strike a balance between a bill too strong to pass and a bill too weak to be worth passing.⁴¹

The March on Washington, which occurred on August 28, 1963, added tremendous momentum to the legislative effort. A. Philip Randolph first conceived of such a mass protest in 1941. Randolph had been planning a mass

34. Filvaroff & Wolfinger, *supra* note 13, at 11–12.

35. *Id.* Two years later, “Bloody Sunday,” when civil rights protesters were met with violent beatings on the Edmund Pettus bridge in Selma, Alabama, while news cameras rolled, would provide a similar impetus for the passage of the Voting Rights Act of 1965. See Symposium, *Promoting Racial Equality*, 9 J.L. & POL’Y 347, 379–80 (2001).

36. While this chorus of a thousand similar protests may have seemed spontaneous, they were the result of years of grassroots organizing. See PAUL OSTERMAN, *GATHERING POWER: THE FUTURE OF PROGRESSIVE POLITICS IN AMERICA* 18–19 (2002). The successes of the Montgomery Bus Boycott of 1955 prompted the formation of the Southern Christian Leadership Conference (SCLC) in 1957. Formed with the express goal of stimulating mass direct action against racial oppression, SCLC united black Southern ministers who had all been involved in similar local protest movements in Southern communities. Several training institutions, like the Highlander Folk School, were established specifically to cultivate local civil rights leadership across the South that would be skilled in the tactics of nonviolent social protest. *Id.* at 53–54. The movement was founded on the persistent building of local institutions that could undertake similar training of citizens everywhere. *Id.* Not surprisingly, the major cultural events of the civil rights movement—the Montgomery Bus Boycott, the Freedom Rides, Student Non-Violent Coordinating Committee’s (SNCC) “Freedom Summer” in Mississippi, and the Birmingham protests—all flowed from this extensive, intentional grass roots organization. See generally RUSTIN, *supra* note 26.

37. Filvaroff & Wolfinger, *supra* note 13, at 13.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 13–14.

demonstration against black unemployment in conjunction with the 100-year anniversary of the Emancipation Proclamation. This effort was quickly married to the effort to build support for the civil rights bill winding its way through Congress. Randolph (representing the Negro American Labor Council), King (representing the Southern Christian Leadership Conference, SCLC), and the leaders of the NAACP, Urban League, Congress of Racial Equality (CORE), and Student Nonviolent Coordinating Committee (SNCC) formed a coalition to organize a national march in an effort to build on the spontaneous demonstrations occurring nationwide and to bring in as many allies as possible to the civil rights cause, especially trade unions and church groups. Bayard Rustin, the early architect of nonviolent social protest that animated the movement and a strong adherent of coalition politics, was named the chief organizer of the march. When more than 250,000 peaceful demonstrators descended on the national Mall—a quarter of whom were white—it constituted the largest mass demonstration in the nation's history, one that received more national and international press coverage than any prior social protest. President Kennedy, who had tried to get organizers to cancel the march, ultimately endorsed it publicly.⁴²

Republican support was absolutely necessary if a civil rights bill was going to be passed in the face of staunch opposition from Southern Democrats.⁴³ The Kennedy administration engaged in intense negotiations with House Republicans, convincing them that it was in their political interest to support civil rights and allowing Republicans to take credit for several provisions of the bill.⁴⁴ The end result was that the bill passed the House stronger than it had entered it.⁴⁵ The bill entered the Senate several months after Kennedy's assassination. President Johnson announced shortly after taking office that his first priority was the enactment of the civil rights bill as passed in the House.⁴⁶ Johnson had already passed major points of his agenda by the time the bill reached the Senate, so he had little to fear from Southern Democrat reprisals.⁴⁷ In addition, as a Southern Democrat, he was determined not to appear weak on civil rights and jeopardize black support for the Democratic Party.⁴⁸ In the Senate, Southern Democrats initiated a filibuster which continued until the Johnson administration marshaled enough votes for cloture by co-opting

42. This ever so brief summary of the coalition politics that animated passage of the Act does not begin to do justice to the civil rights movement and the courageous acts of thousands. For a prize-winning treatment of the subject, see TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63* (1988).

43. Filvaroff & Wolfinger, *supra* note 13, at 14, 16.

44. *Id.* at 14-21.

45. *Id.* at 21-22.

46. *Id.* at 24.

47. *Id.*

48. Filvaroff & Wolfinger, *supra* note 13, at 24.

Republicans who represented districts with small black populations and no racial conflict.⁴⁹ The bill passed ultimately passed in the Senate by a lopsided vote of 73–27, with few alterations.⁵⁰

In the ensuing presidential election, Johnson won by a landslide with a coalition of Northern liberals and blacks, establishing the base of the Democratic party for the next forty years. Presidential candidate Barry Goldwater, who had vociferously opposed both the cloture vote and the Act itself, carried only the Deep South and a few other states. The efforts of moderate Republicans to give their party a pro-civil rights slant—which was the reason many of them supported the Act’s passage—were quickly washed away with Goldwater’s states’ rights rhetoric.⁵¹ Arch-conservatives, faced with resounding defeat in the presidential election, did more than lick their wounds. They set about building the foundations for a conservative ideological movement in which ideas that were then out of the mainstream of even their own party would ultimately take center stage. It took less than twenty years for a revitalized conservative movement to bear fruit in the election of Ronald Reagan in 1980, and movement towards conservatism continues to be vital to this day.⁵² Meanwhile, the coalition of working-class and ethnic whites, liberals, and blacks that made the New Deal possible has eroded.⁵³

Nevertheless, the civil rights revolution and the legislation it gave birth to spawned other social movements.⁵⁴ Many of the rights movements that followed the Act’s passage, especially the feminist movement, were rooted in frustration with the Act’s shortcomings.⁵⁵ Emulating the work of women’s

49. *Id.* at 22–23.

50. *Id.* at 26.

51. *See id.* at 30.

52. By 2003, after the midterm elections, Democrats were both out of the White House and in the minority in both houses of Congress for the first time in fifty years—a minority position that appeared even more established after the 2004 presidential election in which George W. Bush garnered 51 percent of the vote. *Election Results*, at <http://cnn.com/ELECTION/2004/pages/results/president>.

53. *See* Alexander Polikoff, *Racial Inequality and the Black Ghetto*, POVERTY & RACE, Nov./Dec. 2004, at 1 (detailing the demise of the New Deal coalition since November 1968).

54. Of course, the movement also led to the passage of the Voting Rights Act of 1965 and the Fair Housing Act of 1968.

55. The Equal Employment Opportunity Commission, charged with enforcing the Act’s prohibition against sex discrimination, largely ignored the 50,000 sex discrimination complaints that poured in within the first five years of its existence. Bonnie Eisenberg & Mary Ruthsdotter, *Living the Legacy: The Women’s Rights Movement 1848–1998*, The National Women’s History Project, available at <http://www.legacy98.org/move-hist.html> (1998). Angered by this sexism, but emboldened by the fact that civil rights legislation was passing through Congress at all, women began organizing to pass legislation targeted toward sex discrimination. *Id.* The National Organization for Women was founded in 1966 for just such a purpose, paving the way for a surge of women’s rights organizations dedicated toward legislative change. *Id.* The passage of Title IX

organizations, Latino, Asian, and gay and lesbian groups also sought to strengthen provisions of the Act or to introduce new legislation to address specific group concerns. Indeed, the idea of interest-group organizing to achieve legislative goals, which is now a main conduit through which the citizenry interacts with government, is a legacy of the civil rights movement's success with the 1964 Civil Rights Act.

C. *Coalition Theory*

While blacks were the leaders and main participants in the civil rights movement, allies were welcomed. In particular, the Student Nonviolent Coordinating Committee (SNCC), founded in April 1960 in alliance with SCLC, began the interracial brigades of non-violent civil rights workers that organized Freedom Summer and the Freedom rides.⁵⁶ After a first wave of civil rights victories and an emerging "black power" movement, an explicit intellectual debate ensued about the efficacy of interracial coalitions. The debate turned on whether blacks—a marginal, historically oppressed group—and whites—a dominant, historic oppressor—could realistically work together in a way that would truly benefit black people.⁵⁷

Bayard Rustin, an African-American who had worked in pacifist and labor movements before turning to civil rights, often argued that political participation on the part of a range of interest and identity groups is necessary to any project of social reform. "The issue is which coalition to join and how to make it responsive to your program," he wrote. "Necessarily there will be compromise. But the difference between expediency and morality in politics is the difference between selling out a principle and making smaller concessions to win larger ones."⁵⁸ Rustin was quite explicit that his ambitions for the civil rights movement went beyond mere desegregation to the realm of economic justice. Establishing "the Negro's right to sit at a Woolworth's counter" or to vote were relatively easy goals, he wrote.⁵⁹ "[B]ut it demands much creativity, patience, and political stamina to plan, develop, and implement programs and priorities. It is one thing to organize sentiment behind laws *that do not disturb*

and the introduction of the Equal Rights Amendment, along with many other federal, state, and local sex discrimination laws, originated from the feminist movement's emulation of the civil rights movement's focus on legislation to overcome discrimination. *Id.*

56. See generally RUSTIN, *supra* note 26.

57. The debate necessarily was mainly about "blacks" and "whites" because at the time the nation was 87 percent white, 10 percent black, and only 3 percent "other." See *infra* note 68.

58. Michael Anderson, *The Organizer*, N.Y. TIMES BOOK REV., Nov. 9, 2003, at 13 (quoting RUSTIN, *supra* note 26).

59. Bayard Rustin, "Black Power" and Coalition Politics, COMMENTARY, Sept. 1966, at 35, 40.

consensus politics, and quite another to win battles for the redistribution of wealth.”⁶⁰

Rustin argued that true racial equality would require a redistribution of resources in the form of an aggressive program of federal spending. He supported A. Philip Randolph’s proposed \$100 billion Freedom Budget, an effort on the order of the Marshall plan, because, he argued, only \$20 billion or more in annual spending would “destroy the economic and social consequences of racism and poverty at home today.”⁶¹ Such an audacious agenda necessitated coalition politics that expanded beyond the mere 10 percent of the population that blacks then constituted. Then, as now, meaningful reform required altering current political consensus and therefore, he argued, “[w]e must see to it that the liberal-labor-civil rights coalition is maintained and, indeed, strengthened.”⁶² For this reason, Rustin publicly rejected the emerging rhetoric of “black power,” and its underlying skepticism about the viability of coalition politics. He also seemed to recognize the centrality of self-interest in American politics. He advocated a broader agenda that spoke to the needs of *all* poor and working class people. A “liberal-labor-civil rights coalition,” he argued, “would work to make the Democratic party truly responsive to the aspirations of the poor and would develop support for programs . . . aimed at the reconstruction of American society in the interests of greater social justice.”⁶³ In his view, the advocates of “black power” were merely aiming to create “a new black establishment.”⁶⁴

Stokely Carmichael and Charles Hamilton answered Rustin in their book, *Black Power*. In a chapter entitled “The Myths of Coalition” they attacked the notion that political coalitions and the civil rights gains they wrought were animated by anything other than raw self-interest. Perceiving the interests of whites and blacks to often be adverse, they argued that the so-called “allies” of black people would prove unreliable when a conflict of interest arises.⁶⁵ With this clear-eyed understanding, they articulated their view as to when coalitions between blacks and whites could be viable, even as they approached the subject with much skepticism:

We . . . recognize the potential for limited, short-term coalitions on relatively minor issues. But we must note that such approaches seldom come to terms

60. *Id.* (emphasis added).

61. *Id.*; see also *id.* at 36 (advocating the Freedom Budget).

62. *Id.* at 40; see also *id.* at 36 (noting that “one-tenth of the population cannot accomplish much by itself”).

63. *Id.* at 36.

64. Rustin, *supra* note 59, at 36.

65. STOKELY CHARMICHAEL & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 75–76 (1967). Stokely Carmichael changed his name to Kwame Ture after publication of *BLACK POWER*. In this essay, when I refer to him as the author of that text, I use the name Stokely Carmichael.

with the roots of institutional racism. In fact, one might well argue that such coalitions on subordinate issues are, in the long run, harmful. They could lead whites and blacks into thinking either that their long-term interests do *not* conflict when in fact they do, or that such lesser issues are the *only* issues which can be solved. With these limitations in mind, and a spirit of caution, black people can approach possibilities of coalition for specific goals.

Viable coalitions therefore stem from four preconditions: (a) the recognition by the parties involved of their respective self-interests; (b) the mutual belief that each party stands to benefit in terms of that self-interest from allying with the other or others; (c) the acceptance of the fact that each party has its own independent base of power and does not depend for ultimate decision-making on a force outside itself; and (d) the realization that the coalition deals with specific and identifiable—as opposed to general and vague—goals.⁶⁶

Like Rustin, my concern is with altering current political consensus in a legislative or policymaking context. Specifically, I want progressives to recapture majoritarian politics in order to pursue different, more progressive public policy choices—ones that give broader opportunity to everyone *and* that reduce racial inequality. In the brutal world of politics and policymaking, that will require commanding 51 percent on any given policymaking or elective vote. But to advance and sustain an entire progressive agenda, progressives will need to cultivate enduring coalitions that regularly command more than 51 percent. Again, the Civil Rights Act of 1964 passed by about a 75 percent margin, at least in the Senate, attesting to the centrality of progressive politics at that time.

Frederick Douglass famously said, “Power concedes nothing without a demand, it never did and it never will.” Indeed, Douglass emphasized the necessity of struggle in any quest for reform, especially one involving the freedom and uplift of historically oppressed African-Americans.⁶⁷ The civil

66. *Id.* at 79. This early articulation of the preconditions for interracial coalition building has been influential and tested in recent political science literature concerning the efficacy of such coalitions. See, e.g., Paula D. McClain & Steven C. Tauber, *Racial Minority Group Relations in a Multiracial Society*, in GOVERNING AMERICAN CITIES: INTERETHNIC COALITIONS, COMPETITION, AND CONFLICT 111, 113 (Michael Jones-Correa ed., 2001); Raphael J. Sonenshein, *Biracial Coalitions in Big Cities: Why They Succeed, Why They Fail*, in RACIAL POLITICS IN AMERICAN CITIES 193, 199 (Rufus P. Browning et al. eds., 1990).

67. To put the quote in full context, Douglass stated:

Let me give you a word of the philosophy of reform. The whole history of the progress of human liberty shows that all concessions yet made to her august claims, have been born of earnest struggle. The conflict has been exciting, agitating, all-absorbing, and for the time being, putting all other tumults to silence. It must do this or it does nothing. If there is no struggle there is no progress. Those who profess to favor freedom and yet depreciate agitation, are men who want crops without plowing up the ground, they want rain without thunder and lightening. They want the ocean without the awful roar of its many waters.

rights movement is a vindication of Douglass's argument. As noted above, an intense, grass-roots struggle that *demand*ed social change from those in political power was the only successful route to passage of meaningful civil rights legislation. In sum, progressives should expect struggle; toil and sacrifice will be required to command power. And, progressives should build alliances among groups with ostensibly common interests.

In 1964 about 87 percent of the population was white, 10 percent was black, and the small remainder was composed of other races. Today, Latinos outnumber African-Americans, and demographers predict that we will become a majority-minority nation shortly after mid-century.⁶⁸ Latinos are our fastest growing demographic group, followed by Asians.⁶⁹ One might think that more diversity and a declining percentage of whites would lead to a more progressive politics, but the rise of conservatism since 1964 belies this intuition. Among the challenges to progressive coalition building are the friction and transaction costs created by new racial complexity and the risk of zero-sum politics prevailing over coalition politics.

Despite the challenges, I believe progressives have no alternative but to pursue coalitions with potential allies. In the most diverse of places, frequently large urban centers, the reality of growing racial diversity is that it is increasingly unlikely that a single racial group can succeed independently. In such diverse environments, coalition building is the imperative route to political power. Diversity can be a source of power if properly harnessed. The risk with ever complex diversity, however, is that the administrative costs of intergroup negotiations and the potential for conflict increases with each new group or interest that must be incorporated. This is compounded with the risk of zero-sum perceptions, in the construction trades for example, and the sheer difficulty of establishing intergroup communication and understanding.⁷⁰

This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both. . . . Men may not get all they pay for in this world, but they must certainly pay for all they get. If we ever get free from the oppressions and wrongs heaped upon us, we must pay for their removal. We must do this by labor, by suffering, by sacrifice, and if needs be, by our lives and the lives of others.

Frederick Douglass, *The Significance of Emancipation in the West Indies*, Address Delivered in Canandaigua, New York (Aug. 3, 1857), in 3 *THE FREDERICK DOUGLASS PAPERS: 1855-63*, 183, 204 (John W. Blassingame ed. 1979).

68. See CASHIN, *supra* note 4, at 90.

69. *Id.*

70. See, e.g., *id.* at 70-78 (underscoring the communication and other challenges to cultivating successful integrated communities and institutions).

There are inspiring examples of multiracial, multi-class coalitions that have transcended race, class, and ideology to move a policymaking body to a more progressive course. Dallas Area Interfaith (DAI), an affiliate of the Industrial Areas Foundation (IAF), was started by a group of black, white, and Latino ministers and local leaders. DAI transcends stereotyping by organizing around people's interests rather than their fears.⁷¹ It remains cohesive in part by refusing to meet unless membership of all three ethnic groups—blacks, whites, and Latinos—are present. By frontally challenging the way certain public officials had been exploiting racial divisions, DAI was responsible for getting the City of Dallas as well as Dallas Independent School District (DISD) to create and then later to increase funding for after-school programs throughout the school district. Even more impressive, DAI was largely responsible for passage of a \$1.4 billion school bond initiative. They succeeded first by breaking up a coalition of white and Latino members of the Dallas school board known as the "slam-dunk group."⁷² Consistent with political science research concerning other school boards throughout the nation, the white and Latino members of the board had operated as a voting block that frequently opposed the black members of the board.⁷³ DAI was able to turn out large numbers of community leaders at school board meetings; it persuaded the Latino members of the school board to ally with black board members to support the after-school program, which white members had opposed. The school board ultimately appropriated more money than DAI had originally requested for the program and brought about the demise of the slam-dunk coalition.⁷⁴

The success of the DAI is not accidental. Built on the pioneering work of Saul Alinsky, all IAF affiliates follow the same principles: community organization that focuses around a coalition of institutions, usually churches, but also unions, education associations, and other groups.⁷⁵ Most importantly, IAF leaders frankly accept self-interest as the driving motivation for all parties involved in politics. Alinsky insisted that the only basis on which long-term stable organizations could be built was to found them on self-interest of their participants. Hence, IAF teaches its members how to identify self-interest and use it strategically.⁷⁶ As the example of Dallas Area Interfaith attests, this strategy has proved successful, sometimes enormously so, in enabling IAF

71. See OSTERMAN, *supra* note 36, at 77.

72. *Id.*

73. *Id.* at 77–78; see also Kenneth J. Meier & Joseph Stewart, Jr., *Cooperation and Conflict in Multiracial School Districts*, 53 J. OF POL. 1123, 1123 (1991) (examining politics in 118 multiracial urban school districts and finding that "Anglos-Latino" coalitions are more likely to be formed than "Black-Latino" coalitions).

74. See OSTERMAN, *supra* note 36, at 78.

75. *Id.* at 40.

76. *Id.* at 49.

affiliates to alter the political status quo and move policymakers to a progressive course.⁷⁷ Elsewhere I have offered other examples of multiracial coalitions among seemingly strange bedfellows that were formed based upon mutual, enlightened self-interest—an understanding that can be created through the artful dissemination of empirical data.⁷⁸

As we celebrate and reflect on the successes (and unmet promise) of the civil rights movement we cannot ignore those factors that made the movement possible. A transcendent social order cannot and will not be achieved without the hard work of grass-roots mobilization. Progressive, majority power will not be achieved without expanding our numbers. While the path of least resistance is to work solely within a single issue, or single identity organizations and communities, progressives will be increasingly disempowered if they fail to organize the constituencies they care about.

At the same time, progressives need to develop an empathy with the seeming stranger who might become a bedfellow. They should not write off the white working-class guy, the so-called “Nascar dad,” who may seem at first blush to be too far across a cultural divide to cultivate. Nor should they write off any racial, ethnic, or class constituency whose interests would seem to converge with a progressive agenda. Instead, progressives should develop the language and data to engage every potential ally. In my view, this is the only way progressivism will return to the mainstream of American politics.

II. CONCLUSION

When Martin Luther King, Jr. wrote his famous “Letter from a Birmingham Jail” on April 16, 1963, he was responding not just to eight Alabama clergymen who had published a statement in the local newspaper criticizing the timing and wisdom of the Birmingham demonstration, but also to the many detractors of direct mass protest, including traditional civil rights organizations. King, like Frederick Douglass before him, knew “through painful experience that freedom is never voluntarily given by the oppressor; it

77. An exemplar is the Greater Boston Interfaith Organization (GBIO) which led a state-wide campaign that won passage in the state legislature of a \$100 million Housing Trust Fund in 2000. GBIO “worked successfully for a \$30 million annual increase in state capital budget for housing . . . won a \$2 million increase in funding for Boston Public Schools for textbooks and instructional supplies . . . secured a \$23 million commitment in new funding for affordable housing from City of Boston . . . raised a \$6 million loan fund at 0% interest to finance the construction of Nehemiah homes affordable to average working families [and] . . . organized with the Justice for Janitor’s [sic] campaign to win significant pay and benefit increases for area janitors.” Greater Boston Interfaith Organization, Key Achievements, at <http://www.gbio.org> (last visited May 16, 2005).

78. See CASHIN, *supra* note 4, at 304–17 (summarizing the work of regionalist, community development, and smart growth organizations).

must be demanded by the oppressed.”⁷⁹ At the same time, King was “cognizant of the interrelatedness of all communities and states” and the “inescapable network of mutuality” we live in.⁸⁰ He dared believe that “our fear-drenched communities” could one day radiate with “love and brotherhood.”⁸¹ If King had accepted the pessimism of so many progressives today, he never would have written that letter and persevered in his belief that a different social order could be brought about.⁸² Dramatic change is inevitable as a result of growing diversity. The only question is, will progressives harness it and do the hard work of building alliances across boundaries of difference, or will we continue to despair at the status quo, while others organize and continue to divide us from people and interests groups who could be our natural allies?

79. Letter from a Birmingham Jail, Martin Luther King, Jr. (Apr. 16, 1963), in *BLESSED ARE THE PEACEMAKERS* 242 (S. Jonathan Bass ed., 2001).

80. *Id.* at 239.

81. *Id.* at 256.

82. Professor John Powell, of Ohio State University, made this statement at a panel on residential integration on which we both appeared during a conference on building integrated communities. The panel was sponsored by the Open Society on Oct. 22, 2004, in Cherry Hill, New Jersey.